

J. W. ROBERTS
JEAN ROBERTS

IBLA 83-885

Decided March 16, 1984

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claim null and void ab initio. CA MC 54642.

Affirmed

1. Mining Claims: Powersite Lands -- Mining Claims: Withdrawn Land
-- Mining Claims Rights Restoration Act -- Powersite Lands --
Withdrawals and Reservations: Powersites

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

APPEARANCES: J. W. Roberts and Jean Roberts, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

J. W. Roberts and Jean Roberts have appealed from the July 27, 1983, decision of the California State Office, Bureau of Land Management (BLM), declaring the Johnson Claim Placer Mining Claim null and void ab initio. The claim is located in the S 1/2 SW 1/4 sec. 9, T. 34 N., R. 11 W., Mount Diablo meridian. The location notice in the record shows that the claim was located on November 30, 1932. BLM found that the land occupied by the claim was not subject to location because

[a]ccording to the official records of this office, Lots 1 and 2 (now Lots 14 and 15), NW 1/4, and E 1/2 SW 1/4 (now Lots 13 and 16) of Sec. 9, T. 34 N., R. 11 W., MD Mer., were withdrawn from entry, location or other disposal, by the filing of an application on May 11, 1925, for Power Project No. 608. [1/]

1/ The record indicates that the claim in question lies entirely within the withdrawn area.

Appellants state on appeal that their location notice submitted to BLM on March 9, 1981, "constitutes a valid claim, re Public Law 359." 2/ The law referred to by appellants is P.L. 84-359, 30 U.S.C. § 621 (1976), known as the "Mining Claims Rights Restoration Act of 1955." The purpose of that Act was "[t]o permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development." After the enactment of the statute on August 11, 1955, such lands were open to mineral location with certain exceptions. 3/

[1] Mining claims located prior to August 11, 1955, on lands closed to mineral entry were null and void ab initio and the Mining Claims Rights Restoration Act, supra, did not operate retroactively to validate claims that were void when located. George L. Hawkins, 66 IBLA 390, 392 (1982); John C. Farrell, 55 IBLA 42 (1981). The claim at issue was located in 1932 at a time when the lands were withdrawn from mineral location for a power project. BLM correctly declared the claim null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ Appellants filed a quitclaim deed, a map, and filing fee on Oct. 20, 1979. BLM subsequently requested a copy of the original location notice which was filed Mar. 9, 1981. Section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), required for a claim located prior to Oct. 21, 1976, that a copy of the official record of the notice of location be filed with BLM on or before Oct. 22, 1979. "Copy of the official record of the notice of location" is defined in 43 CFR 3833.0-5(i) to include "[a] legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim * * * or other evidence, acceptable to the proper BLM office, of such instrument of recordation." We need not decide whether the quitclaim deed and map were "other evidence" so as to timely satisfy the recordation requirements, because as discussed, infra, the claim is null and void ab initio.

3/ It is unclear from the record whether these exceptions are applicable to the lands in question.

